No. _____

IN THE SUPREME COURT OF THE UNITED STATES

ANTHONY DWAYNE WILLIAMS; T'ESHEKA RENYELL YOUNG,
Applicants

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent

On Application to Stay the Mandate of the United States Court of Appeals for the Fifth Circuit

EMERGENCY APPLICATION FOR A STAY PENDING THE FILING AND DISPOSITION OF A PETITION FOR A WRIT OF CERTIORARI

ANTHONY DWAYNE WILLIAMS AND
T'ESHEKA RENYELL YOUNG
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PARTIES TO THE PROCEEDING

The parties to the proceeding below are as follows:

Applicants are Anthony Dwayne Williams and Tesheka R. Young.
They were the petitioners in the Tax Court and appellants in the court of appeals.
They are the applicants and would be appellants in this case.

Respondent is The Commissioner of Internal Revenue (C.I.R.)
The Commissioner of Internal Revenue was the respondent in the Tax Court and appellee in the court of appeals.
They would be the respondent or appellee in this case.

Supreme Court Rule 29(4)(a)
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CORPORATE DISCLOSURE STATEMENTS

Per Supreme Court Rule 29, Applicants Anthony Dwayne Williams (a man) and T'esheka Renyell Young (a woman) are non-fictional entities. We are not a corporation. Rule 29, does not apply.

To the Honorable Samuel Anthony Alito Jr., Associate Justice of the Supreme Court of United States and Circuit Justice for the United States Court of Appeals For The Fifth Circuit:

Applicants Anthony Dwayne Williams (a man) and T'esheka Renyell Young (a woman) humbly comes before you to ask for a stay of mandate pending the filing and disposition of a petition for a writ of certiorari.

OPINIONS BELOW

All Court Orders have been included in Appendix referenced to as "A" followed by the page number where they are located.

ROA" references are to the documents comprising the electronic record on appeal, as numbered by the U.S. Court of Appeals for The Fifth Circuit.

Unless otherwise indicated, section references are to the Internal Revenue Code of 1986, as amended, in effect for the relevant years. Rule references are to the Tax Court Rules of Practice and Procedure. All monetary amounts are rounded to the nearest dollar.

JURISDICTION

This case was on appeal from the U.S. Tax Court. Appendix (A) (**A20-39**)

The final judgment was ruled in favor of the Commissioner of Internal Revenue (C.I.R.) respondent-appellee on April 16, 2020. (**A42**)

Appellants Anthony Williams and T'esheka Young timely file a petition for panel rehearing on May 26, 2020. We also timely filed a petition for rehearing enbanc on May 29, 2020.

Both petition for rehearing was denied on June 16, 2020. (**A44**) We timely filed a petition for Motion for Stay of Mandate on June 22, 2020.

The Motion was denied the next day on June 23, 2020. (**A46**) The 5th Circuit Court mandate is due to issue on July 01, 2020. See Fed. R. App. 41(b).

This Court has jurisdiction to stay issuance of the 5th Circuit's mandate pending the filing a petition for certiorari before or after judgment or decree. See 28 U.S.C. § 2101(f) and § 1254(1).

STATEMENT OF THE CASE

This case was commenced on December 26, 2017, under IRC § 6330 in response to notices of determination, all dated November 22, 2017, concerning proposed collection actions for Appellants' Federal income tax liabilities for tax years 2012 and 2013 and for frivolous tax submission penalties under section 6702 for returns and other filings for 2012 and 2013.

On December 3, 2018, the Court ordered that the two cases be consolidated for purposes of trial, briefing and opinion.

On February 11, 2019 Appellants filed a Statement Tender of Payment in Full (Conditional Offer of Acceptance) which was denied and rejected on June 17, 2019 served on June 19, 2019.

On May 15, 2019 Appellants filed a Motion for Summary Judgment which the Judge denied on June 17, 2019 served on June 19, 2019.

On June 19, 2019 the two consolidated cases were set for trial at the New Orleans, Louisiana trial calendar for October 7, 2019.

On August 7, 2019, Appellee filed a Motion for Summary Judgment along with a Declaration of Appeals Officer Andrew S. Ostos to which Appellants objected to on September 13, 2019.

1. Tax Court Ruling

On September 30, 2019 respondent's Motion for Summary judgment was granted. On October 08, 2019 Appellants filed a Notice of Appeal that was acknowledged on October 23, 2019 by the Tax Court Clerk of the Court.

2. U.S. Appellate Court 5TH Circuit Panel's Decision

The majority affirmed the Tax Court's decision.

REASONS FOR GRANTING THE STAY

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show **(1)** a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; **(2)** a fair prospect that a majority of the Court will vote to reverse the judgment below; and **(3)** a likelihood that irreparable harm will result from the denial of a stay. In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the relative harms to the applicant and to the respondent." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010).

We believe all 3 tests would be met.

While this case was still in the hands of the Tax Court there were several exceptional issues raised that we believe are very important, but were not addressed by the court in its final order and decision. These very same issues were also raised on appeal and still were ignored by the appellate court. We truly believe if looked at by this court, that a majority of the Court will vote to reverse the judgment.

The issues raised in court:

A. Tax Court Lacked Personal jurisdiction.

B. Fraud On The Court Was Committed

C. I.R.C. § 6702(A), 2(A) – Penalty, Conflict In Stated Opinion

D. Appellate Court Failed To Address Our Tax Liability For The § 6702 Penalty Properly

E. Appellate Court Reviewed Our Liability For The § 6702 Penalty Incorrectly Which Is In Direct Conflict With The U.S. Constitution Article I, § 2, cl. 3, and Article I, § 9, cl. 4

F. There Are No Facts On Record That Makes Appellants Such "Person" Pursuant To I.R.C. § 6671(b) Who Is Under A Duty To Perform

G. U.S.C. § 6020(b)(1) Is A Core (Prerequisite) Requirement For Determining Tax Liability, Impose A Penalty For A Frivolous Filing And To Gain Jurisdiction Over The Person

H. Appellee Failed To State A Claim Upon Relief Can Be Granted Was Not Addressed By This Court In The Opinion

I. Its Well-Settled Law That Review Courts Can Not Consider Things Outside of The Record

J. Any Future Collection Attempt Efforts Should Be Considered Harassment, Extortion And Fraud

ARGUMENT AND AUTHORITIES

I. THERE IS A REASONABLE PROBABILITY THAT THE COURT WILL GRANT CERTIORARI TO DETERMINE WHETHER THE COURT LACKED JURISDICTION.

A. Jurisdiction: Subject-Matter And Personal

The Tax Court did not address this issue when raised and this legal matter was overlooked in the decision of the Appellate Court, therefore jeopardizing its final decision and possibly rendering it "VOID".

The U.S. Supreme Court has held:

> "Jurisdiction to resolve cases on the merits requires both authority over the category of claim in suit (subject-matter jurisdiction) and authority over the parties (personal jurisdiction), so that the court's decision will bind them." *Ruhrgas AG v. Marathon Oil Co.*, 526 U.S. 574, 577 (1999). (Emphasis added.) (ROA.836) (ROA.1751) (ROA.819 - ROA.820) (ROA.1734 - ROA.1735)
>
> "Subject-matter limitations on federal jurisdiction serve institutional interests. They keep the federal courts within the bounds the Constitution and Congress have prescribed. Accordingly, subject-matter delineations must be policed by the courts on their own initiative even at the highest level. * * * Personal jurisdiction, on the other hand, 'represents a restriction on judicial power . . . as a matter of individual liberty.' *Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982).* Therefore, a party may insist that the limitation be observed, or he may forgo that right, effectively consenting to the court's exercise of adjudicatory authority." *Ruhrgas AG v. Marathon Oil Co., 526 U.S. 574, 583-584 (1999).* (Emphasis added.)

Jurisdictional Defenses

Lack Of Jurisdiction Can Be Raised At Any Stage Of The Proceedings.
Insurance Corp. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982).
Edelman v. Jordan, 415 U.S. 651, 677-78 (1974).

Matson Navigation Co. v. United States, 284 U.S. 352, 359 (1932).

> The U.S. Supreme Court has held, "...personal jurisdiction is a personal right, defendants may waive it expressly or through implication..." (Emphasis added)

We never waived our "personal rights" jurisdiction expressly or "through implication". Respondent, the Tax Court and the 5th Circuit appellate Court did not address the issue when raised. (ROA.836) (ROA.1751) (ROA.819 – ROA.820) (ROA.1734 – ROA.1735)

The 5th Circuit Appellate Court held PER CURIAM. [*] that arguments not raised in the lower trial courts may not be considered in this Appeals Court and are waived. See *Sauter v. Commissioner of Internal Revenue, 070919 FED5, 18-60858 (5th Cir. 2019)* citing *Day v. Wells Fargo Nat'l Ass'n, 768 F.3d 435, 436 n.1 (5th Cir. 2014)* (per curiam). As a result of the Tax Court failing to address this issue it puts itself in conflict with the 5th Cir. Court ruling and has waived the issue. Therefore it must be held through acquiescence under the weight of authority and prior rulings from the 5th Cir. Court that the Tax Court decision is not "binding" and is a "VOID" judgment. See *Earle v. Mcveigh 91 U.S. 503 (1876).* [1]

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[1] *Earle v. Mcveigh 91 U.S. 503 (1876)*

> Standard authorities lay down the rule, that, in order to give any binding effect to a judgment, it is essential that the court should have jurisdiction of the person and the subject-matter; and it is equally clear that the want of jurisdiction is a matter that may always be set up against a judgment when sought to be enforced, or where any benefit is claimed under it, as the want of jurisdiction makes it utterly void and unavailable for any purpose.

B. Fraud On The Court Was Committed

In its final decision the 5th Cir. Court stated PER CURIAM:*

> "Ignoring the Sixteenth Amendment, appellants argue that an income tax on their wages is unconstitutional"... "We perceive no need to refute these arguments with somber reasoning and copious citation of precedent; to do so might suggest that these arguments have some colorable merit." *Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984).*

There's a huge conflict with this statement by the Appellate Court and what was actually stated by us on record in our reply brief.

Citing Crain v. Commissioner, 737 F.2d 1417, 1417 (5th Cir. 1984) it states:

> "Glenn Crain appeals from the dismissal of his Tax Court petition challenging the constitutional authority of that body and defying the jurisdiction of the Internal Revenue Service to levy taxes on his income. Crain asserts that he "is not subject to the jurisdiction, taxation, nor regulation of the state," that the "Internal Revenue Service, Incorporated" lacks authority to exercise the judicial power of the United States, that the Tax Court is unconstitutionally attempting to exercise Article III powers, and that jurisdiction over his person has never been affirmatively proven."

Nowhere in the Court's official record would you find any position taken by us or statements from us challenging the constitutional authority of the Tax Court and defying the jurisdiction of the Internal Revenue Service to levy taxes on income, nor would you find us stating that we are "not subject to the jurisdiction, taxation, nor regulation of the state". As we stated previously "anyone at any time could become subject to The U.S. Federal Income Tax". We held no position that the "IRS lacks authority to exercise the judicial power of the United States, that the

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Borden v. Fitch, 15 Johns. 141.

Tax Court is unconstitutionally attempting to exercise Article III powers". These statements published in the opinion by the Court are false, inaccurate and misleading and constitute fraud on the Court[2] and must be "VOID".

What we actually stated was:
"If allowed the taxing of Appellants' earnings even the associated alleged penalties would be a direct tax on "personal property" which is forbidden under U.S. Constitution Article I, § 2, cl. 3, and Article I, § 9, cl. 4 without apportionment for us who did not engaged in a **federal economic activity**[3] that's subject to a federal tax under the excise laws of the United States."

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[2] Fraud on the court consists of conduct: " 1) on the part of an officer of the court; that 2) is directed to the judicial machinery itself; 3) is intentionally false, willfully blind to the truth, or is in reckless disregard of the truth; 4) is a positive averment or a concealment when one is under a duty to disclose; and 5) deceives the court." *Carter,* 585 F.3d at 1011 (citing *Demjanjuk v. Petrovsky,* 10 F.3d 338, 348 (6th Cir.1993)). Petitioner has the burden of proving existence of fraud on the court by clear and convincing evidence. *Id.* at 1011-12 (citing *Info-Hold, Inc. v. Sound Merch., Inc.,* 538 F.3d 448, 454 (6th Cir.2008)).

[3] **Federal Economic Activity:**
Remuneration (either immediate or deferred) paid by the federal government including-- but not confined to "**wages**"
Benefits paid by the federal government; The **proceeds** of, and from, federal ("United States") corporations or instrumentalities such as National Banks, railroads, etc.; The proceeds of, and from, the conduct of a "trade or business" (the performance of the functions of a public office). (26 U.S.C. § 7701(a)(26)

Proceeds:
Means any form of related payment or gain, including, for example, dividends paid to stockholders, etc.. To invest in an activity is to engage in that activity.)

Wages:
Remuneration of any kind, and by any name (including 'salary', 'fee', etc.) paid to any "**employee**", and to others in positions in the federal civil or military services. (see below)

Employee:
A federal government worker or office-holder; Workers and office-holders of the local governments of the District of Columbia and the territories and possessions; Workers and office-holders of any federal, D.C., or territorial or possessions government agency or instrumentality; Officers of any federal corporation. (Office-holder may be appointed or elected.)

We went on to say:
"Anyone at any time could become subject to The U.S. Federal Income Tax."
"It does not matter of your race, creed, color, religion, nationality, gender, state you live in, or your employment status. It is a well-known fact that the federal income tax is fundamentally considered an excise tax. Anyone at any time could voluntarily engage in a "federal economic activity" and become liable for the tax. It does not matter if you consider yourself a Natural Person, Freeman, Private (Sector) Citizen, Private (Sector) Employee, Louisianan or whatever, this is not what makes you liable or not liable for the tax. It is the voluntary act of engaging or using one's "property"[4] to engage in a "federal economic activity"."

"The bottom line is this; the federal income tax must be viewed in two different ways. **(1)** For those who engaged in federal economic activity whose wages and or income **can be tax by default without apportionment** because of their involvement in such activity, (16th Amendment) therefore giving the United States jurisdiction over the "person". Consequently any arguments contesting the constitutionality, liability or legal aspect of the tax would indeed be frivolous. **(2)** For those who did not engage in a federal economic activity the taxing on the earnings of these people without apportionment is indeed a violation of the United States Constitution Article I, § 2, cl. 3, and Article I, § 9, cl. 4 . Therefore not giving the United States jurisdiction over the "person". Consequently any arguments contesting the constitutionality, liability or legal aspect of the tax imposed would not be frivolous."

The Constitutional arguments that we keep mentioning has not only to do with

liability and the associated penalty but jurisdiction as well, and when raised

(jurisdiction) must be address and established so the Court's decision is binding on

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Federal Corporation:
As defined in the Public Salary Tax Act of 1939 sec. 207 -- "a corporate agency or instrumentality, is one **(a)** a majority of the stock of which is owned by or on behalf of the United States, or **(b)** the power to appoint or select a majority of the board of directors of which is exercisable by or on behalf of the United States…".

[4] PROPERTY -- That which is peculiar or proper to any person; that which belongs exclusively to one; in the strict legal sense, an aggregate of rights which are guaranteed and protected by the government. *Fulton Light, Heat & Power Co. v. State, 65 Misc.Rep. 263, 121 N.Y.S. 536.* (Black's Law Dictionary 4th Edition)

both parties. Appellate Courts and any other U.S. Federal Court is obligated to follow the rulings of the U.S. Supreme Court.

The U.S. Supreme Court held:

> "We have declared that lower courts lack authority to determine whether adherence to a judgment of this Court is inequitable. Those courts must "follow the [Supreme Court] case which directly controls, leaving to this Court the prerogative of overruling its own decisions." *Rodriguez de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 484 (1989); see also ante, at 237-238.*"
> *Agostini v. Felton, 521 U.S. 203, 237, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997).*

C. I.R.C. § 6702(A), 2(A) – Penalty, Conflict In Stated Opinion

Pursuant to I.R.C. § 6702(a), 2(A) (allowing a penalty of $5,000 if the person files an incorrect return "based on a position which the Secretary has identified as frivolous"), the Appellate Court upheld the penalty stating:

> "As we noted at the outset, Williams's position that he did not receive wages because he was a "non-federal worker" paid by a private employer is frivolous. And the Commissioner has recognized it as such. IRS Notice 2010-33(III)(7) (citing Revenue Ruling 2006-18)." (Emphasis added.)

1. There's A Huge Conflict With This Statement By The Court

The above statement was taken out of context, misstated with verbiage omitted.

The actual statement as it appears on the forms in the record is as follows:

The Forms 4852 reads[5]:

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[5] Our statement on the form was only intended to rebut the incorrect classification of our receipts as statutory "wages" submitted by the payer. It was to notify the IRS of the intent of the form. If the form had been submitted without any comments or explanation, it would have left the IRS to assume all sorts of allegations. They were meant to inform the IRS that we did not engage in any federal economic active.

"Please note that I am providing this as a corrected W-2 form due to the fact that the "PAYER" provided the original form which erroneously alleged payments of the Internal Revenue Code (IRC) sections 3121 and 3401 as wages/compensation" that is hereby disputed. The "PAYER" refuses to issue the correct forms after repeated requests. They have listed payments as "wages" as defined in the IRC sec. 3401(a) and 3121(a). I am rebutting their claim by stating that I am a private sector citizen (non-federal worker) hired by private sector companies (non-federal entities), (Federal entity) as defined in 3401 (c),(d). I am not employed in "trade or business" nor am I an "officer of a corporation". Additionally, the "PAYER" was not required to report my private sector payments on any 1099 or W-2 Form but did anyway, and in so doing reported to the IRS that my payments are taxable, which they are not. My private sector payments are not reportable under Internal Revenue Code (IRC) 6041 (a) as the "PAYER" is a private sector company (non-federal entity). As such they are not described within the definition of "trade or business" in 7701 (a) (26) and the payments made to me cannot, therefore be characterized as salaries, wages, compensations, remunerations or other fixed or determinable gains, profits, tips or income. The amounts listed as withheld are correct, however I expect a full and complete refund." (ROA.960 - ROA.961)

IRS Notice 2010-33 (III)(7) (citing Revenue Ruling 2006-18)

IRS Notice 2010-33(III)(7) reads:

> (7) Only certain types of taxpayers are subject to income and employment taxes, such as employees of the Federal government, corporations, nonresident aliens, or residents of the District of Columbia or the Federal territories, or similar arguments described as frivolous in Rev. Rul. 2006-18, 2006-1 C.B. 743.

Rev. Rul. 2006–18, page 743

> Frivolous tax returns; only certain persons subject to federal income tax. This ruling emphasizes to taxpayers, promoters, and return preparers that all individuals are subject to federal income tax. Any argument that Forms W–2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous.

Revenue Ruling 2006-18 reads:

> PURPOSE

> The Service is aware that some taxpayers are claiming that only federal employees and persons residing in Washington, D.C. or federal territories and enclaves are subject to federal tax…
>
> Any argument that Forms W-2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous…
>
> Any argument that Forms W-2 only record and report payments made to federal employees, or that only federal employees or residents of the District of Columbia or federal territories and enclaves earn wages subject to tax, has no merit and is frivolous…
>
> Whether only federal employees and persons residing in Washington, D.C. or federal territories and enclaves are subject to federal income and employment taxes…
>
> Taxpayer A contends that the federal government can only legally demand an "income" tax from federal employees and persons residing in Washington, D.C. or federal territories and enclaves…
>
> The argument that only federal employees and persons residing in Washington, D.C. or federal territories and enclaves are subject to tax is based on a misinterpretation of section 3401(c), which defines "employee" and states that the term "includes an officer, employee or elected official of the United States, a State, or any political subdivision thereof…
> In addition to liability for the tax due plus statutory interest, taxpayers who fail to file valid returns or pay tax based on the argument that Forms W-2 only record and report payments made to federal workers, or that only federal employees or residents of federal territories and enclaves earn wages, face substantial civil and criminal penalties…

Again nowhere in the record would you find any of the above statements made by us using the word only in that sense. One must be careful when using word adjectives like only, always, and never when it comes to fact. These adjectives can make a true statement false. Nowhere cited in these IRS Rulings does it address

anything about rebuttals of third-party information forms are not allowed and or subject to penalty. As we have said time and time again anyone can at anytime can become liable for paying the federal income tax, by engaging in the privileged activity that's subject to the excise laws of the United States. This includes but not limited to private citizen, private contractor, resident, nonresident and foreign alien. Rebutting inaccurate third-party information about one's earning is not a position and is legal. A position is not what you did or how you did it, it's WHY you did what you did. Therefore the reason given by this court for sustaining the penalty was based on Materiality[6] lies ["staw man" arguments] and misconception by the respondent-appellee. In other rulings courts have found information return to be insufficient evidence for tax liability. See *Portillo v. Commissioner, 988 F.2d 27, 29 (5th Cir. 1993).*

> The court below also finds an information return to be insufficient evidence of tax liability. See *Estate of Gryder v. Commissioner, T.C. Memo. 1993-141 (1993)*, citing *Portillo v. Commissioner, 932 F.2d 1128 (5th Cir.1991).*
>
> The court in *Daines also cited Portillo v. Commissioner, 988 F.2d 27, 29 (5th Cir. 1993)* (a Form 1099 is "insufficient to form a rational foundation for the tax assessment against the [taxpayers in this case].")
>
> *Mason v. Barnhart, 406 F.3d 962, 965 (8th Cir. 2005)* ("Receipt of a Form 1099 does not conclusively establish that the recipient has reportable

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[6] Materiality
"In general, a false statement is material if it has 'a natural tendency to influence, or [is] capable of influencing, the decision of the decision making body to which it was addressed.'" Neder v. United States, 527 U.S. 1, 16 (1999) (quoting United States v. Gaudin, 515 U.S. 506, 509 (1995), and Kungys v. United States, 485 U.S. 759, 770 (1988) (internal quotation marks omitted)).

> income," although Mason did not "dispute the amount reported"); *Daines v. Alcatel, S.A., 105 F.Supp.2d 1153, 1155 (E.D. Wash. 2000)*

The federal tax law and the special meanings given to some terms in the I.R.C. mean what they say. They are intentionally and carefully written this way in order to not include nontaxpayers or people who have not engaged in a federal government economic activity. This keeps the federal income tax constitutional and legal and not in conflict with Article I, § 2, cl. 3, and Article I, § 9, cl. 4 of the Constitution. (See NonTaxpayer cases reference below.)

Economy Plumbing Co. v. U.S. 470 F.2d 585 (Fed. Cir. 1972)

> The courts have allowed these suits because the parties filing the suits were not taxpayers and were outside the revenue system of which the above statute is a part. See *Long v. Rasmussen, 281 F. 236 (D.Mont.1922)*; *Rothensies v. Ullman, 110 F.2d 590 (3d Cir. 1940); Raffaele v. Granger, 196 F.2d 620 (3d Cir. 1952)*; and *Bullock v. Latham, 306 F.2d 45 (2d Cir. 1962)*.

Long v. Rasmussen 281 F. 236 (D.Mont. 1922), the court said:

> The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to nontaxpayers. The latter are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law. With them Congress does not assume to deal, and they are neither of the subject nor of the object of the revenue laws. * * * [Id. 281 F. at 238.]

Even if the respondent (C.I.R.) believed that we indeed received statutory "wages", and or statutory "income" which we did not, there is no contradictory testimony from anyone with firsthand knowledge of our earnings in the record stating otherwise. Therefore the § 6702(A), 2(A) penalty was improperly sustained

and should be reversed.

D. Appellate Court Failed To Address Our Tax Liability For The § 6702 Penalty Properly

As stated in the record by the Tax Court we were allowed to dispute our liability for the § 6702[7] penalty citing *Pohl v Commissioner, T.C. Memo 2013-291 at *3.* (ROA.909) (ROA.1824)

The Tax Court agreed that appellants were entitled to a de novo review of respondent's determination. *Goza v. Commissioner, 114 T.C. at 181-182 (2000)*; see also *Pohl v. Commissioner, T.C. Memo. 2013-291* (holding that **a taxpayer can dispute his liability for a § 6702 penalty because he would not have received a notice of deficiency before assessment of that penalty**). (ROA.909) (ROA.1824) (*Emphasis added*). The Tax Court rejected and ignored our analysis of the penalty, assessment and liability concerning the violation. The Tax Court only relied on the verification of a supervisor's signature on a Form 8278. The verification of a supervisor's signature on a Form 8278 had nothing to do with proving liability for the § 6702 penalty. We stated in our Opposition for Motion for Summary judgment that income tax must be reviewed in harmony with Article I, § 9, cl. 4 of the constitution or it's unconstitutional. The Court called our

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[7] I.R.C. § 6703(a) -
§6703. Rules applicable to penalties under sections 6700, 6701, and **6702**
(a) Burden of proof
In any proceeding involving the issue of whether or not any person is liable for a penalty under section 6700, 6701, or 6702, the burden of proof with respect to such issue shall be on the Secretary.

argument frivolous and stated our tax liability was not before the court. The court failed to show how that would suspend the U.S. Constitution and to keep us from challenging the violation.

E. Appellate Court Reviewed Our Liability For The § 6702 Penalty Incorrectly Which Is In Direct Conflict With The U.S. Constitution Article I, § 2, cl. 3, and Article I, § 9, cl. 4

The Appellate Court was asked in our opening brief to view this case under the same (personal property) analysis as used in the *UNION ELECTRIC COMPANY v. UNITED STATES 363 F.3d 1292 (Fed. Cir. 2004)* case which places its primary reliance on the Supreme Court decisions in *Pollock v. Farmers' Loan & Trust Co., 157 U.S. 429, 15 S.Ct. 673, 39 L.Ed. 759 (1895) (" Pollock I ")*, and *Pollock v. Farmers' Loan & Trust Co., 158 U.S. 601, 15 S.Ct. 912, 39 L.Ed. 1108 (1895)* as controlling. (Br.22-30)

The U.S. Supreme Court has never specifically overruled the direct tax holding of Pollock, therefore the § 6702 liability penalty assessments must be based on the reasoning in Pollock. Pollock has never been overruled, though its reasoning appears to have been discredited. Nonetheless, the Appellate Court was obligated to follow Pollock until it is explicitly overruled by the Supreme Court. *Agostini v. Felton, 521 U.S. 203, 237, 117 S.Ct. 1997, 138 L.Ed.2d 391 (1997).* There is not one U.S. Supreme Court case ruling where the 16 Amendment alone is controlling. The 16 Amendment must be viewed in respect to the *Pollock v.*

Farmers' Loan & Trust case which has always been controlling since 1895 and currently still is.

In its final decision the 5th Cir. Court stated PER CURIAM:*

> "Ignoring the Sixteenth Amendment, appellants argue that an income tax on their wages is unconstitutional. What we said years ago in rejecting the appeal of a tax protestor still rings true…
>
> Moreover, appellants were not allowed to challenge their underlying tax liability in the collection due process hearing because they had previously received notices of deficiency for the tax years at issue but did not dispute that tax liability. I.R.C. § 6330(c)(2)(B)." (Emphasis added.)

In essence, just like the Honorable U.S. Supreme Court Justice Clarence Thomas who asked a question (back in 2016) to the U.S. Solicitor General during oral argument concerning domestic abusers and gun control:

> Justice Thomas asked:
>
> > "Can you give me an area of law where a misdemeanor violation suspends a Constitutional right?"

My question is: How does § 6330(c)(2)(B) suspends Article I, § 2, cl. 3, and Article I, § 9, cl. 4 of the Constitution? Where does it state that we are barred anywhere in the I.R.C. from citing the U.S. Constitution in court, especially us who did not engage in a federal economic activity?

Citing *McCullough v. Com. of Virginia, 172 U.S. 102 (1898)* the high court said:

> "It is elementary law that every statute is to be read in the light of the constitution. However broad and general its language, it cannot be interpreted as extending beyond those matters which it was within the constitutional power of the legislature to reach."
> *McCullough v. Com. of Virginia, 172 U.S. 102 (1898)*

In *Eisner v. Macomber, 252 U.S. 189 (1920)* citing Mr. Justice Pitney who

delivered the opinion of the Court said:

> "...Congress cannot by any definition it may adopt conclude the matter, since it cannot by legislation alter the Constitution, from which alone it derives its power to legislate, and within whose limitations alone that power can be lawfully exercised." (Emphasis added)

The accusation of a violation must first be proven before any subsequent related penalty may be imposed. This is fundamental due process of law. The Constitution come first, all else follows.

F. There Are No Facts On Record That Makes Appellants Such "Person" Pursuant To I.R.C. § 6671(b) Who Is Under A Duty To Perform

This was not addressed by the Tax Court or the Appellate Court in its final opinion. I.R.C. § 6671(b)[8] and its relationship to § 7701(a)(1) has been explained in detail previously and will only be referenced to in this application to avoid being cumbersome. Please See (ROA.819 – ROA.828).

G. U.S.C. § 6020(B)(1) Is A Core (Prerequisite) Requirement For Determining Tax Liability, Impose A Penalty For A Frivolous Filing And To Gain Jurisdiction Over The Person

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[8] 26 U.S. Code § 6671. Rules for application of assessable penalties:

(a) Penalty assessed as tax
The penalties and liabilities provided by this subchapter shall be paid upon notice and demand by the Secretary, and shall be assessed and collected in the same manner as taxes. Except as otherwise provided, any reference in this title to "tax" imposed by this title shall be deemed also to refer to the penalties and liabilities provided by this subchapter. (Emphasis added).

(b) Person defined
The term "person", as used in this subchapter, includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under a duty to perform the act in respect of which the violation occurs.

Citing WHEELER v. CIR 127 T.C. 200 (2006)...
"P failed to file his Federal income tax return for 2003. R also failed to introduce evidence that the Secretary had made a return for 2003 satisfying the requirements of sec. 6020(b), I.R.C. 1. Held: In order to satisfy his burden of production under sec. 7491(c), I.R.C., with respect to the sec. 6651(a)(2), I.R.C., addition to tax, R must introduce evidence that the tax was shown on a return. **When a taxpayer has not filed a return, the sec. 6651(a)(2), I.R.C., addition to tax may not be imposed unless the Secretary has prepared a substitute for return (SFR) that meets the requirements of sec. 6020(b), I.R.C."**

Even though in the case cited above, petitioner Wheeler did not file an income tax return for 2002 and 2003 the Court unequivocally stated in order for the IRS to impose a I.R.C. § 6651(a)(2) penalty, the requirements of § 6020(b) must be satisfied first. Proving that § 6020(b) is a mandatory requirement. The 26 C.F.R. § 301.6020-1(b) Execution of returns explicitly reference "**frivolous**" also. Therefore under the weight of authority § 6020(b)(1) must be satisfied before any additional amount may be assessed legally for a return that has been deemed frivolous, again because the information on it cannot be trusted, it's frivolous. By law a frivolous return must be prepared in accordance with § 6020(b)(1), § 6065 and 28 U.S.C. § 1746 **or** there's no way to calculate what legitimate (legal) taxes are owed, yet alone the associated penalties, this would be considered fraud and extortion. If a frivolous return is not prepared in accordance with § § 6020(b)(1) and 6065 then the IRS does not truly believe the return is frivolous, therefore any associated penalty would be void or illegal.

In order for the Commissioner and his delegates (IRS) to legally assess and claim property from anyone who's return was executed in accordance with **28 U.S.C. § 1746** and deemed frivolous, the IRS shall[9] make such return pursuant to § 6020(b)(1). (ROA. 828-829)

The reason for that requirement, which is codified at 26 U.S.C. § 6020(b), is to allow a proper amount of tax to be collected, something not possible from an actual frivolous return (which will be one not soundly based on the law, and therefore not capable of conveying or creating a valid legal claim to an amount of tax) .

If the word shall mean optional or discretional then this would mean filing taxes would be optional. See 26 U.S.C. § 6012 which uses the word shall.

26 U.S. Code § 6012. Persons required to make returns of income
(a) General rule Returns with respect to income taxes under subtitle A **shall** be made by the following:
(1)
(A) Every individual having for the taxable year gross income which equals or exceeds the exemption amount…

Again this issue was not addressed in the Court's final decision.

H. Appellee Failed To State A Claim Upon Relief Can Be Granted Was Not Addressed By This Court In The Opinion

Appellants are the only ones with firsthand knowledge, testimony and facts on record before the Court. Our tax documents were all signed under the penalty of

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[9] Definitions: 'Shall'
The statutory instruction "comes in terms of the mandatory 'shall,' which normally creates an obligation impervious to judicial discretion."
Lexecon Inc. v. Milberg Weis Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998).

perjury. (ROA.400 – ROA.410) (ROA.449 – ROA.462) (ROA.1315 – ROA.1325) (ROA.1364 – ROA.1377).

This Honorable Court should not recognize anything the opposing counsel submits due to the fact they have no firsthand knowledge of the events leading up to this case. While enlightening to the court "Statements of counsel in brief or in argument are not facts before the court and are therefore insufficient for a motion to dismiss or for summary judgment."

See *Trinsey v Pagliaro, D.C.Pa. 1964, 229 F.Supp. 647*

I. Its Well-Settled Law That Review Courts Can Not Consider Things Outside Of The Record

United States v. Lovasco 431 U.S. 783 (1977)

Stated in the opinion:

"This finding of a continuing investigation, which forms the foundation of the **majority opinion, comes from statements of counsel made during the appellate process. As we have said of other unsworn statements which were not part of the record, and therefore could not have been considered by the trial court: "Manifestly, [such statements] cannot be properly considered by us in the disposition of [a] case."** *Adickes v. Kress & Co., 398 U.S. 144, 157-158, n. 16.* While I do not question the good faith of Government counsel, **it is not the business of appellate courts to make decisions on the basis of unsworn matter not incorporated in a formal record.**" (Emphasis added)

There is nothing in the Tax Court records that the Court or the respondent addressed any of our claims concerning "personal jurisdiction", (ROA.819 – ROA.820) (ROA.836) (ROA.1734 – ROA.1735) (ROA.1751) tax rebuttal

(ROA.838 – ROA.841) (ROA.1753 – ROA.1756) or requirement pursuant to § § 6020(b)(1) and 6065. (ROA.828 – ROA.836) (ROA.1743 – ROA.1751). Majority opinion, comes from statements of counsel made during the 5TH Cir. appellate process and should not be considered, as the U.S. Supreme Court said of other unsworn statements which were not part of the record, and therefore could not have been considered by the trial court. *Adickes v. Kress & Co., 398 U.S. 144, 157-158, n. 16.* Therefore respondent has conceded to those issues (stated above) through acquiescence; wherefore appellee's conjecture, speculation and hearsay statements must be disregarded. See *Sauter v. Commissioner of Internal Revenue, 070919 FED5, 18-60858 (5th Cir. 2019) c*iting *Day v. Wells Fargo Nat'l Ass'n, 768 F.3d 435, 436 n.1 (5th Cir. 2014)* (per curiam).

J. Any Future Collection Attempt Efforts Should Be Considered Harassment, Extortion And Fraud

Pursuant to *U.C.C. - ARTICLE 3 - NEGOTIABLE INSTRUMENTS (2002) > PART 6. DISCHARGE AND PAYMENT > § 3-603. TENDER OF PAYMENT, we* offered a Tender of Payment in Full with a Conditional Offer of Acceptance to honestly, immediately pay in full any debt we lawfully owed to the respondent. The only condition was the respondent had to give us a bill or statement with the exact amount we allegedly owed and sign it in accordance with 28 U.S.C. 1746(1). (ROA.112) Appellee chose not to accept the offer through their silence and no response; therefore they should be barred from collecting and any future attempts

must be considered harassment, extortion and fraud. (ROA.122) Appellants' were just trying other methods to propel Appellee to perform as required by IRC § 6020(b)(1).

II. A FAIR PROSPECT THAT A MAJORITY OF THE COURT WILL VOTE TO REVERSE THE JUDGMENT

We believe a fair prospect that a majority of the Honorable Court will vote to reverse the judgment if granted a writ of certiorari. We believe this Honorable Court would not turn a blind eye to the injustice, corruption and fraud that has taken place here against us. We believe that this Honorable Court would agree that all issues claiming a constitutional violation has occurred should be addressed first before the case goes any further. Any lack of jurisdictional claims must be addressed first before the case goes any further. If not addressed, the issue can be attacked at any time even collaterally or even by a different court, undermining the whole case outcome, rendering any decision by the judge void. This causes the loss of valuable resources, time and money. The Tax Court and the 5TH Circuit Appellate Court chose not to answer several crucial elements of jurisdictional and constitutional questions for whatever reason.

But chose to engage in stereotyping and spewing lies about Anthony Williams and Tesheka Young and about things they did not say, such as business taxes are not taxable, wages are not income, the federal income tax is unconstitutional and so forth. This goes against every principle and belief of our knowledge concerning

the federal income tax. This has never been our position or view. On the contrary the Appellants do wholeheartedly believe that the federal income tax is 100% constitutional when held in strict harmony with Article I, § 2, cl. 3 and Article I § 9 cl 4. Do Appellants believe that it's being misunderstood and misapplied to our earnings due to either corruption, ignorance or a lack of knowledge and understanding about the federal income tax? Yes we do.

However our intention here is not to point the finger, accuse or blame anyone. We are here to seek truth and justice with honor, to set the record straight concerning our earnings and to help educate those who may have problems struggling with the truth.

Both the Tax Court and the 5th Circuit Appellate Court are engaging in what we call the "**staw man**" argument or fallacy, which is the act of taking another person's argument or point, distorts it or exaggerates it in some kind of extreme way, and then attacks the extreme distortion, as if that is really the claim the first person is making. This type of dishonesty should not be condoned by this Honorable Court.

III. IRREPARABLE HARM TO APPLICANTS WILL RESULT FROM THE DENIAL OF A STAY

Anthony Williams and T'esheka Young respectfully state that we will suffer irreparable harm financially if the stay is denied. Our financial status has changed drastically in the last few years. Our yearly earnings were cut by 30% because

Tesheka had to resign from her job as an educator to take care of our special need child. I'm the sole provider in our home. To make things worse, because of the COVID-19 outbreak we lost another 20% of our earning because I was temporarily laid off. I worked part-time as a fire safety inspector for a company that makes its money hosting large entertainment events (such as concerts) and large assembly groups. We were informed that it will be another 2 months before we will be allowed to come back to work. We are unable to pay this large tax burden in the combined of amount of $91,275.13 and doing so would force us into bankruptcy. The government was established to be a benefit to man, to protect their rights, liberty and property. How is the taking of a man's property against his will a benefit to him, especially when no proper claim to said property has been set forth? Therefore humbly all we ask of the Court is to grant the stay and allow us to exhaust our final option.

The Other Party Will Not Be Substantially Harmed

This is not a lawsuit for breach of contract where one party did not live up to the end of their bargain. This is not a lawsuit for an unpaid credit card, loan or any other financial debt. This is not a lawsuit for an unpaid bill for some type of service rendered. This is not a lawsuit for compensation for causing damage to property, bodily harm or even death to someone. This is not a lawsuit for

compensation for causing any kind of physical, emotional (mental) or financial harm to anyone.

This is a dispute of personal property being taken to support the government. In *Lane County v. State Of Oregon 74 U.S. 71 (1869)* in their opinion the U.S. Supreme Court stated:

> "A tax, in its essential characteristics, is not a debt, nor in the nature of a debt. A tax is an impost levied by authority of government, upon its citizens or subjects, for the support of the state. It is not founded on contract or agreement. It operates in invitum. *Peirce v. The City of Boston, 3 Metc. 520.* A debt is a sum of money due by certain and express agreement. It originates in, and is founded upon contract express or implied." Quoting *City of Camden v. Allen, 26 N.J.L. 398 (N.J. 1857) (*Emphasis added.*)*

In *United States v. County of Allegheny, 322 US 174 (1944)* the high Court said:

> "The 'Government' is an abstraction, and its possession of property largely constructive. Actual possession and custody of Government property nearly always are in someone who is not himself the Government but acts in its behalf and for its purposes. He may be an officer, an agent, or a contractor. His personal advantages from the relationship by way of salary, profit, or beneficial personal use of the property may be taxed..."

We don't believe that a man or woman will come forth and testify under oath that they will be substantially harmed if this Motion for Stay is granted.

CONCLUSION

For these reasons, Applicants respectfully ask that this Court order that the mandate for the United States Court of Appeals for the Fifth Circuit be stayed pending the filing and disposition of a petition for a writ of certiorari. Because the

5TH Circuit's mandate is set to issue on July 01, 2020 Applicants also respectfully ask that this Court order that the issuance of the mandate be stayed while the Court considers this Application.

Respectfully submitted this 29th day of June 2020

ANTHONY DWAYNE WILLIAMS

T'esheka Renyell Young
13022 Goodwood Blvd.
Baton Rouge, LA 70815
Telephone: 225-275-2005

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice of Emergency Application For A Stay Pending The Filing And Disposition Of A Petition For A Writ Of Certiorari was served via USPS First Class Mail in a postage-paid wrapper in accordance to the Supreme Court of the United States Rule 29, addressed to the following parties on this 29TH day of June 2020:

Supreme Court Rule 29(4)(a)

Solicitor General of the United States
Room 5616, Department of Justice,
950 Pennsylvania Ave.
N. W., Washington, DC 20530-0001

Appellee

COMMISSIONER OF INTERNAL REVENUE
(Though signed counsel)

Counsel for Appellee

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(28 U.S.C. 1746(1))

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on this 29TH day of June 2020.

Anthony Dwayne Williams

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APPENDIX

No. 19-60804

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

ANTHONY DAWYNE WILLIAMS; T'ESHEKA RENYELL YOUNG,
Petitioners - Appellants

V.

COMMISSIONER OF INTERNAL REVENUE,
Respondent - Appellee

On Appeal from the United States Tax Court, No. 26670-17 L and 26671-17 L, CARY DOUGLAS PUGH, Judge

---

EXCERPTS OF RECORD OF APPELLANT, ANTHONY D. WILLIAMS AND T'ESHEKA R. YOUNG

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v. COMMISSIONER OF INTERNAL REVENUE

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0002	12/26/2017	RQT	REQUEST FOR PLACE OF TRIAL AT NEW ORLEANS, LA by Petrs. Anthony Dwayne Williams & T'esheka Renyell Young		R 01/02/2018	
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0010	10/09/2018	O	ORDER PETRS. BY 11/9/18 FILE AN OBJECTION OR RESPONSE TO RESP. MOTION TO CONSOLIDATE.		B 10/10/2018	
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